

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4741 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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VYAS UPENDRAKUMAR JAYANTILAL - Petitioner(s)

Versus

SIDDHPUR NAGAR PALIKA & 3 - Respondent(s)

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Appearance :

MR HIMANSU M PADHYA for Petitioner(s) : 1,
MR PRAKASH K JANI for Respondent(s) :1
RULE SERVED for Respondent(s) : 2,
MS REETA CHANDARANA, AGP for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner- son of deceased Jayantilal Vyas has challenged an order dated 18-07-2001 passed by Director of Municipalities. By the

said order, request of the petitioner for being granted compassionate appointment came to be turned down.

2.The father of the petitioner was working as clerk in Siddhpur Nagarpalika. He expired while in service on 03-10-1990. The deceased left behind him widow, two daughters and two sons. The petitioner was elder of two sons. He was however, minor at the time of death of his father. Shortly after attaining majority, he applied for compassionate appointment by his first application dated 07-08-1995. It was followed by a formal application in a printed form given by the petitioner in September 1998. The respondents did not consider his case favourably. The petitioner therefore, approached this Court by filing Special Civil Application No. 11561/2000. This petition came to be disposed of by order dated 15-11-2000. The learned Judge directed to consider the case of the petitioner for compassionate appointment within the stipulated time. Pursuant to the said direction, the impugned order dated 18-07-2001 came to be passed. The reason stated in the order for rejecting the request of compassionate appointment of the petitioner is that the application was made beyond the time limit permitted.

3.The learned advocate for the petitioner submitted that reasons stated by the authorities in the impugned order for rejection of the request of the petitioner is not borne out from record. He submitted that the petitioner made the application within reasonable time of his having achieved majority. At the time of death of his father, the petitioner was a minor. Even the Government policy as provided in Government Resolution dated 02-08-1998, permits such application to be considered by the Competent Authority. He submitted that at the relevant time, family of the petitioner was receiving monthly pension which was grossly inadequate to support the family of five members. In short he requested this Court to quash the order and direct the granting of compassionate appointment to the petitioner.

4.The learned advocate Shri Prakash Jani opposed the petition. He submitted that the father of the petitioner was engaged in Octroi department. Since many years now the Octroi department in the Nagarpalika has been abolished. The financial condition of Nagarpalika is also not very sound. He pointed out that Director of Municipalities has in fact put a further ban on

granting of appointment on compassionate ground by its circular dated 30-06-2003. He further pointed out that as per record in December 2005, widow was receiving pension of Rs.2150/- per month. He submitted that when the deceased employee expired in October, 1990, direction for appointment on compassionate ground in the year 2006 would not justify.

5.I have heard the learned advocate appearing for the parties and considered the material on record. It is true that when the father of the petitioner died in harness, the petitioner was minor. As per the policy of the Government, the petitioner may have the choice to make an application for compassionate appointment upon attaining majority. The case of compassionate appointment of the petitioner however, has to be considered in totality of the facts and circumstances of the case. In the decision of Commissioner of Public Instructions and others v. K.R. Vishwanath reported in 2005 AIR SCW 4102, the Hon'ble Supreme Court made following observations :

“As was observed in State of Haryana and Ors. v. Rani Devi & Anr. (AIR 1996 SC 2445), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of

Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi's case(supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs.) and Anr.(1994 (2)SCC 718), it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. (1994(4)SCC 138), that as a rule in public service appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

6. In the present case, the deceased employee expired on 03-10-1990. Octroi department in the Nagarpalika is since abolished, there is general ban on granting compassionate appointment in Municipalities. Sixteen

long years have passed since the deceased expired. It is not a case where on account of financial crisis due to sudden death of the deceased, the family would require immediate financial assistance. It is true that much of delay cannot be attributed to the petitioner however, the fact remains that petitioner lost his father nearly 16 years back. Considering all these aspects of this matter, it is not possible to grant order of compassionate appointment to the petitioner.

7.The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(raghu)